Keeping Up Appearances:
Accessing New Zealand's Civil Courts without a Lawyer

Executive Summary of a PhD awarded to Bridgette Toy-Cronin at the University of Otago, in 2015, concerning the position of people who represent themselves in NZ civil courts

The Purpose of the Study

The number of people going to court without a lawyer is rising across the common law world, and is thought to be increasing in New Zealand. Anyone in New Zealand has the right to appear in person in their own case, but until recently few people did so. This research investigated situations in which people litigated a civil case in person in the Family, District or High Court. It asked three main questions: First, why are litigants going to New Zealand's civil courts without a lawyer? Second, what is their experience of litigating in person? Third, how do other participants in the court system – the judges, lawyers and court staff – perceive litigants in person and respond to them?

Method: Those involved in the study included people who litigated in person (34) (who are called here LiPs – Litigants in Person),[1] court staff (8), lawyers (16) and judges (13). The aim was to consider all their different perspectives. I, the researcher – Bridgette Toy-Cronin – am a former lawyer. So, to provide some protection against my professional biases, I began by exploring the perspectives of LiPs. I hoped to understand, as far as possible, their perspectives before turning my attention to the views of lawyers, judges and court staff with which I was more familiar. The LiPs participated in the study either via interviews or via involvement in a case study of the particular legal proceedings in which they were currently involved. The case studies involved ongoing discussions with the LiP about the progress in their case, review of the court documents associated with it, and where possible, observations of the proceedings conducted in court.

When that aspect of the research was completed, I conducted interviews with court staff, lawyers and judges concerning their interactions with LiPs. By studying all the participants in the court process, and using multiple methods of inquiry, I hoped to establish comprehensive explanations for the various interactions LiPs have with the court system.

[1] LiPs are also called "self-represented litigants", "lay litigants" or "self litigants".

Profile of participants: The LiPs had cases in the Family Court (21), District Court (3), and High Court (10). Of that group, five LiPs could be considered "persistent", in that they were litigating a third or subsequent matter. The Judges interviewed presided in the Family Court (4), District Court (4) and High Court (5). The lawyers practised in the Family Court (5), Family and District Courts (2), or conducted general civil litigation (with no family law practice) (9).

Limitations: The study did not investigate how many people litigate in person in New Zealand courts. There are no reliable statistics on this matter, although estimates are in the range of 10 to 20 per cent of litigants in many areas of civil law, with higher proportions in appeal courts. Since this research was conducted, it has become mandatory for litigants to appear without a lawyer in some Family Court proceedings. The proportion of LiPs in these cases will be very high.

This research focuses only on LiPs who engage actively with the court process. They could be considered only part of the LiP population. This is because overseas studies suggest that a large portion of the LiP population is "inactive", in that they take no steps in their case, including not instructing counsel. Many are defendants in the proceedings, but take no steps to assert a defence. They may then have a judgment entered against them. Some people are so overwhelmed by the court process that they simply abandon their claim or defence. It is a moot point whether they should be considered 'litigants' at all. The experiences of such people, who abandon their claim or defence at an early stage of the proceedings, are not captured in this study. This research focuses only on people who actively engage with the proceedings in their case.

The strengths of a qualitative study of this kind lie in the in-depth inquiry conducted into participants' subjective experiences of the litigation process, rather than in the production of findings that are generalisable to the whole population. However, a range of different kinds of litigants was selected to participate, to try to ensure a wide range of experiences was captured.

Funding and Affiliations: The study was supervised by Professor John Dawson and Associate Professor Nicola Taylor of the University of Otago. It is part of the research programme of that university's Legal Issues Centre. It was funded by scholarships awarded by the New Zealand Law Foundation and the University of Otago. It was approved by the University of Otago's Research Ethics Committee. The thesis has been examined and the PhD will be conferred in December 2015.

Research Findings

Why People Litigate in Person

The findings suggest that practitioners and judges often believe there is a distinction between LiPs who cannot afford to pay for legal services, and therefore must conduct their own proceedings, and LiPs who choose to litigate in person even though they could afford to pay. The reality is more complex than this: in fact, there are a number of overlapping reasons why LiPs litigate in person.

Financial reasons are important and formed part of the reasons for litigating in person expressed by every LiP who participated in this research. Most people do not qualify for legal aid in New Zealand. For example, to qualify in a civil matter, a single person must earn under $22,366 a year. Most working people earn more than that. Some LiPs did qualify for legal aid, but did not take up the opportunity. Legal aid is a loan and some people did not want to take a loan because of the onerous conditions imposed (e.g., providing security over their property, paying interest, etc). Others were willing to accept these loan terms but could not find a lawyer who specialised in the relevant field who was willing to work for legal aid rates.[2] Moreover, there are very few free or low-cost legal advice services available in New Zealand. Many people earning above the legal aid threshold could not afford the hourly rates charged by lawyers. As one person said, "You can't pay $500 per hour when you earn $500 per week". Many people could pay something for legal services, and many had paid for a lawyer at some time (often incurring bills of $20,000 to $40,000 or more), but they had exhausted their budget without resolving their case.

LiPs expressed a number of other motivations for proceeding in person, in addition to financial reasons. Most had nothing to do with the common assumption found among lawyers and judges that many LiPs conduct their own case because they think they could do "better than a lawyer". LiPs' reasons for conducting their own case included:

- having a negative experience with a lawyer before deciding to proceed alone (e.g., disrespectful and/or condescending service; rushed or routine processing of their case; or errors made by the lawyer, such as missed deadlines, or spelling and grammatical mistakes);
- the belief that lawyers are not genuinely independent advocates;
- the idea that a lawyer would bring little advantage, for example because lawyers are merely bureaucrats who fill out forms;

[2] Many lawyers, particularly in general civil litigation, do not work for legal aid rates because the rates are low and the compliance costs are high.

- the lawyer they had hired failed to make any progress on their case (attributed either to the lawyer's fault or the intransigence of the opposing party);
- a lawyer was unnecessary because the "truth" would come out in court regardless, or the judge would help the LiP with their case;
- because they had been litigating for many years already and had the requisite experience (a particularly common belief in long-running Family Court proceedings).

Some Government conduct, intended to limit public spending, may also directly encourage people to litigate in person, such as measures that emphasise the value of self-help (e.g., online information), user-pays court fees, and the 2014 family justice reforms, which prohibit legal representation in some contexts. Some of these measures suggest to the public that the courts are a public service for consumers that can be directly accessed by citizens. Some LiPs can be seen as taking up this invitation.

The Experience of Litigating in Person

The reality is that navigating the court process is too difficult in many – even most – cases for litigants to access in person. The main sources of this difficulty are summarised below. Not every LiP experiences all these difficulties. But the findings of this study suggest that most encounter them to some degree.[3]

First, conducting litigation successfully requires a complex set of information and skills. However, it is difficult for people to access necessary information about the substantive law and court procedure in New Zealand, when there is only limited and difficult-to-filter information available online, and limited access to law libraries. Obtaining and understanding legal information is only half the battle, however. To use the system effectively, LiPs need to understand further complex matters, including ideas about legal relevance and the laws of evidence. Detailed understanding of court procedure is also required to be able to litigate in a strategic manner. Without this knowledge, LiPs can become "stuck", unable to advance their own case. If a matter proceeds to trial, LiPs must be able to examine and cross-examine witnesses, which few can do successfully. They must master legal styles of speech and etiquette, correctly using forms of address and proper legal

[3] It should be kept in mind that the LiPs in this study were sufficiently proactive to have volunteered to join the study. They are therefore LiPs who had a greater level of interaction with the system and therefore probably encountered the difficulties more acutely. Less active LiPs, for example those who never instructed a lawyer and simply did not appear in court, will encounter fewer of these difficulties. They are unlikely to secure more "justice" however.

language, so they appear competent to the lawyers and judges with whom they must engage. Some very experienced LiPs acquire these skills, but if they become too experienced they risk being considered "vexatious" litigants, which undermines their credibility in another way.

Second, there are conflicts involved in being both a party and an advocate in one's own case that mean an LiP cannot use the courts as well as a lawyer can. Furthermore, the fact that LiPs come to court without a lawyer often signals to the judge and to the opposing lawyers that their case is weak (i.e., they are unrepresented because no lawyer will take their case). This lack of credibility before the court can be hard to overcome and might only be remedied by instructing a lawyer. Moreover, like most litigants, LiPs find litigation emotionally stressful. When preparing for court, their lack of emotional distance from their case makes it hard for them to exchange documents with the other side. Receiving affidavits (sworn statements) from the other party that contain "lies" (the other person's "truth") can be painful. This makes it difficult for them to respond. Reaching a negotiated outcome to their case is also often difficult, because the LiP and the opposing lawyer may both be suspicious of one another, and so reluctant to negotiate. Accessing evidence may also be difficult, either due to cost (litigants have to pay for expert evidence) or due to fears people have about providing sensitive information directly to an LiP, rather than to a lawyer. At trial, the concentrated timetable (especially in multi-day trials), with proceedings continuing day after day, may mean LiPs struggle to prepare the necessary material on time, particularly if they have other work commitments. If they have to give evidence, they will be caught between performing the role of witness (giving a factual account) and being an advocate (using evidence to advance their side of the case). All these conflicts are inherent in being an advocate in one's own cause and arise regardless of the individual's technical or intellectual capacity.

A third matter is that lawyers provide many more services to litigants than advocacy in court. They also help litigants navigate the system strategically, they negotiate with their client to shape the case for the court, and they translate their client's case into the necessary legal form. Most litigants labour under what psychologists call "naïve realism": they believe "their side is 'right', and that the other side is 'wrong'". Without a lawyer to help them assess whether their case is based on evidence a court will accept, they may be unable to see its weaknesses. Lawyers, of course, can abuse their power of negotiation with their own client, and that has its own problems. Where lawyers do their job well, however, they can test their client's case, showing them how the court might view it. Without a lawyer playing this role, an LiP may provide too much detail to the court, believing that if the court simply has "the facts" it will see the LiP is "right". Providing such detail often irritates professionals, like the opposing lawyer and the judge. At trial, LiPs may also be

tempted to argue their case at every point, in every cross-examination or re-examination, and in every submission to the judge. It may be only after the trial is over that they will realise their case was not as open and shut as they thought. All these difficulties confront successful conduct of the LiP's case.

The Response from the Court Staff, Lawyers and Judges

Judges, lawyers, and court staff are well aware of these problems and try to assist LiPs in many ways, including giving them advice and substantial assistance in court. Judges and court staff are committed to maintaining the appearance that the courts are accessible to ordinary people. This is because the courts' legitimacy rests partly on this proposition. The Government does not provide enough funding for most people to obtain free legal advice, and few people can afford to pay for a lawyer, but the courts must still somehow be seen as accessible to ordinary people or they will be seen as only available to the rich. In addition, many judges, lawyers and court staff are personally and professionally committed to seeing that substantive justice is done between the parties to a case.

Nevertheless, their attempts to assist LiPs, and therefore sustain the legitimacy of the courts and their own commitments to justice, are subject to significant cross-cutting pressures. To uphold the integrity of the courts, the court staff, judges and lawyers must in fact protect the courts from becoming overloaded with work. It is therefore essential that there be barriers to LiPs accessing the courts. Maintaining institutional and professional integrity also requires that court staff, lawyers and judges remain within defined roles. But these roles have inherent conflicts. Judges must appear to remain neutral between the litigants, for instance, but they must also try to ensure that substantive justice is done, which may require them to assist one party (e.g., the LiP) more than the other. Lawyers have a duty to their own client but they also have a duty to the court and to the efficient administration of justice. Court staff have an administrative function that suggests they should only provide "information", not "advice", to litigants, but often they are personally committed to seeing litigants' needs are actually met and justice is served, which suggests they should, on occasion, give LiPs advice. The presence of LiPs exacerbates all these tensions in roles. A further pressure comes from judges' and lawyers' commitment to maintaining the integrity of the legal profession, and to protecting its heartland – the court – as a space open to the legal profession alone.

These countervailing pressures encourage judges, lawyers and court staff to steer LiPs away from accessing the courts in person. They do not do so in all cases. In some, they find it quicker and

less likely to increase conflict to simply process LiPs rapidly through the system. In many cases, however, where lawyers, court staff and judges were faced with an LiP trying to access the courts, they tried to steer them away, though in a manner that did not undermine the appearance of accessibility. The main tactic used is to emphasise repeatedly that LiPs need a lawyer. This message is conveyed again and again by court staff, lawyers, and judges, and in Ministry of Justice advice to LiPs. If a lawyer were engaged by an LiP, that lawyer would screen the claims brought before the court, and would encourage settlement, thus protecting the courts from overload. Cases eventually brought to court would (usually) be presented in clear and concise terms, according to pre-determined rules, and consistently with the norms of the legal culture into which professional participants are initiated.

When direct encouragement to LiPs to seek legal advice and representation fails, more subtle means of discouraging access are sometimes deployed, such as not allowing LiPs to sit at counsel's benches in the front of the courtroom without permission, and not allowing costs to be awarded in favour of LiPs. Procedural justice theory (a theory from psychology) suggests that messages of exclusion, even subtle ones, affect people's perceptions of justice, even if the litigant ultimately wins their case. Discouraging access in some senses protects the legitimacy of the courts by preventing rising demand, but also risks the courts' legitimacy by suggesting to LiPs that they are excluded because they are not part of "the club". This has important implications because, if people perceive they have been treated unfairly, they may be less willing to respect the courts' authority.

Recommendations:

The question of how to respond to rising numbers of LiPs is vexed. It is being explored in many common law countries. There is no simple answer. This thesis was mainly focused on understanding the LiP phenomenon rather than on developing policy responses. But it concludes that a review of our civil justice system is needed, to produce a system in which more principled choices can be made about which cases come before the courts and about how much time and procedure they should be allocated once they come there.

Some other short-term policy initiatives might help address the difficulties encountered when LiPs access the civil justice system. First, more low cost legal advice and representation services are needed. Providing LiPs only with information is unlikely to be useful, and may simply promote the impression that the courts can be effectively accessed in person, which is rarely the case.

Litigants need one-to-one advice and more innovation is required to explore how this could provided (e.g., by way of clinics, limited retainer advice, or on-line advice services). More experimentation of that kind should occur. Such services could be funded by the state and/or private service providers. Second, providing more information about the general functioning of the courts and their purposes (rather than simply legal principles) would be helpful. This would orient people away from seeing courts as a consumer service and enable them to understand the courts' constitutional role. Third, guidelines for court staff and opposing lawyers, setting out more clearly their roles when dealing with LiPs, would be helpful. Fourth, a cultural change is needed in the way LiPs are perceived. The stereotypes of the "vexatious" litigant or the "fool for a client" are pervasive and inaccurate. LiPs have many different motives and experiences, the costs of litigation are a critical contributor, and more awareness of this would allow other participants to interact with LiPs in a more nuanced fashion.

Case stories: A central purpose of the research was to understand the LiP experience. In undertaking the analysis presented in summary above, there is some danger that the full texture of individual LiPs' experiences are obscured, and that the complex motives of individuals are bleached out in the analysis. More detail on individual LiPs' background and overall experience might help the reader understand them as people, particularly when stereotypes about LiPs abound.

The thesis therefore includes a sketch of four LiPs' experiences of litigating in person: Lisa, Matt, Tom and Gary. They are not real LiPs. Each is a composite of several LiPs who participated in the research. I used the material from interviews and observations in a range of cases to create composite characters that would breathe life into the experience of litigating in person. But each character is still sufficiently fictional to protect the privacy of the individuals upon whom it is based. These portraits are not exhaustive of LiP experiences and should not be considered "types". The legal aspects of their cases are not always clear, and the terminology is not always correct. This is intentional. The cases present the way in which LiPs related their own stories. Their purpose is not to sift through the legal merits and strengths of their case, but to relate the experience of litigating in person, and the motives for doing so.

A. Lisa - Care of Children Act and Division of Relationship Property - Family Court

When my ex left he took our youngest, Joshua, with him. The girls were teenagers and they stayed with me. Josh was only eight, and I was in such a panic, I didn't know what to do. My ex is originally from

Germany and I thought he might take him back there. I mean, I didn't really think he would, but I was worried he might. It all came as such a shock I wasn't sure what to think. I went to see a lawyer straight away. That was all about um, well Joshua is 11 now, so three years ago, and we've been in and out of the Family Court ever since.

At the beginning the lawyer was good because I was in such a state, and I didn't know how the system worked, or what to do, but I got pretty tired of being pushed around. My lawyer was really a bit of a bully, she really made me feel like I had to do what I was told or all these terrible things would happen: I'd never get Josh back. Sometimes when my ex's affidavits would come in and she'd ask me about the allegations - I mean, they were such rubbish, just lies and no evidence, I was so angry - and it would be like she believed them and I had to prove to her they weren't true, to my own lawyer! I was so scared of losing Josh, but eventually I got over the fear. I mean, I was doing all this stuff, what I was told, and nothing was happening, I wasn't making any progress. So how could I make it worse? The property stuff was complicated because of the farm and trust. There were just letters back and forth, back and forth. I thought, well, I can't afford this, I can't keep paying for nothing to happen. I mean, I can write letters. I've got a computer. I'm literate. So now I'm just representing myself.

It was okay preparing the papers for court. I got experience of how they write them from the ones my lawyer did, what the Courts expect, how they are set out, so I knew what to do. I wrote them and then my friend, she works at Corrections and has done lots of probation reports, she looked at my affidavits and tidied some things up and that was it.

I took my papers into the Court Office. I was quite nervous, but they were actually really nice. They helped me put it all in order. But then once I got into Court I couldn't believe it. The Judge kept saying, "What are you actually asking for? What are you actually asking for?". I don't know whether I didn't word it in the right way, but he just kept coming at me. He'd ask a question and then when I tried to answer he'd just look at his papers, like he didn't even care what I was saying. In the end he turned to Sue, my ex's lawyer, and told her that "it was a little irregular" or something like that, but he was going to order a mediation to try and get the property things finalised.

The mediation never happened. Sue just hates talking to me, she always says how uncomfortable she is talking to me and how I need to get a lawyer. Besides, there is no way my ex is going to sit calmly around a table and discuss things. The last time we had a go at that he ended up punching the wall and walking out.

We ended up back in court over Josh. I thought it was going to be just another of those, what are they called, you know the discussions with the Judge. But the next thing I knew I was in the stand and Sue

was asking all these questions. It was so awful. So awful. I couldn't understand what she meant and I just felt sick. She was just so cruel, even the Judge was telling her to back off. Couldn't she see how upset I was? I couldn't believe it. It was horrible, just horrible. I'm never going back to court again, never. It was the worst experience of my life.

I think it worked against them though because the Judge he could see how aggressive they were. I felt like he was pretty sympathetic to me and he has ordered that Joshua is to do every second week with me. It is quite difficult because Josh has spent so much time with his father but it is such a relief to have him back.

With the matrimonial property though, I'm basically stuck. I cut my hours back at work because I was just not coping with the kids and work, with this on top of it. My boss was noticing that I wasn't really concentrating and I thought that if I took some time away from work and just gave it my all, I might be able to get it all sorted out. But it just isn't going anywhere. One of my friends told me I needed to go back to court, to tell the Judge what was happening, but I don't know. I don't even know how to do that, and besides, I just don't want to go back into a courtroom ever again. I don't think a lawyer would be able to do anything more though. It is just too complicated with the farm side of things for a lawyer to understand and I just can't afford to pay one anyway.

B. Matt – Care of Children Application and Protection Order – Family Court

My ex has legal aid, but I have a job so I don't qualify. I went to a lawyer right at the start, and the lawyer was good, but when I realised how long it might take to sort out, at $370/hr, there was just no way. I mean I only bring in $600 a week. I can't afford that. If I'd paid it out of my savings that would have been all the money I'd put aside for the kids' education. I didn't go to Uni myself, although plumbing has worked out well for me. I struggled a bit at school. No one realised I had dyslexia. I want the kids to be able to get more education than I've had though. I couldn't justify spending that money on fighting their mother for access to them, but I'll always fight hard for what is best for them. It hasn't been easy because I don't have much in the way of experience with writing all the papers you need, the affidavits and things. It takes me a long time to read through everything, hours in the evenings on Google trying to reply to things that come in.

The first time we went to Court it was very, very brief. There didn't seem to be a lot of time given to cases. I went there being prepared to speak at length about what was going on but in the end very few things were covered. I was relieved at the time but there were a lot of things I would have liked to let the Court know. I guess I was a little bit disappointed about the depth of coverage that the Judge heard. I felt like I was stereotyped as the male, the aggro man, the oppressor of my ex. I think there is a real

gender bias in the Family Court. I've certainly heard that from other people, like on the online forum I follow a bit. The lawyer for child was a real problem at first. I think she was basically biased against me to begin with. She and my ex's lawyer were rubbing their hands with glee over the fact I was self-representing. They knew each other. It is a small town so that isn't surprising, but they would talk with each other and then approach me together. And the Judge just did whatever the lawyer for child said - it was all over once that fat lady sung to the Judge!

The allegations I've been under, it is just incredible. I've got no criminal convictions, but I've had all of these allegations: rape, attempted murder, serious assault. I was under the allegation of breaking into the family home and stealing things, doing all these things. It is unbelievable what people are allowed to put in affidavits. If rules apply then surely the number one rule is that you tell the truth in court. I've been investigated by CYFS and Police. Nothing came of it but all these allegations have been made, they are all on my Police file and they've all been placed in the Family Court. In the end, because of the number of allegations, the Police did a search warrant and went right through my whole place and turned it upside down and saw nothing. It wasn't until we got to that point that things started to get better.

I think they realised that this stuff was made up and that was the point where the lawyer for child actually started to question some of the stuff my ex was saying. I think that helped and also the next time we went to Court, we struck a much better Judge. She was way more active, asking questions that got a bit more to the heart of matters. I still felt that basically the Judge was doing what the lawyer for child said, and like she didn't really want to hear from me much, but at least it was a bit more in my favour. I liked being able to say my piece to the Judge, answer the questions how I wanted to answer them.

In the end though, for the defended hearing, I got a bit worried and I ended up getting a lawyer who I know to come in and just do that. That way he could get in there and ask the hard questions and they wouldn't be able to rile me up and make me look like I am an aggressive guy. I'd just have been playing into their hands if I'd done that. He did a good job, and I think I did too, doing all that paperwork. It has certainly been a steep learning curve. I've got day-to-day care of the kids now, none of them like their mum's new partner. Mostly I try not to think about it anymore, I don't think it helps, but there is always a bit of fear that it isn't over. She can always go back to the Court again and ask for a change, even though the Judge said we weren't to go back for three years.

C. Tom – Termination of a Franchise Agreement - High Court

January

I'd had the shop for 15 years. 15 years! We'd had a few disputes leading up to that day, but it still came as a shock. They said I no longer had a right to the franchise and that was it. Game over. I went straight to my lawyers, but this all happened right before Christmas and it wasn't my normal lawyer. Turns out the advice the new lawyer gave me wasn't right, but I didn't know that at the time. I was fighting on two fronts - trying to get the franchise back and trying to avoid bankruptcy.

After Christmas my normal lawyer came back and sat down and had a pretty serious discussion with me. I got an opinion from someone else, a pretty top firm in Auckland, and they said, look, this wasn't done right, but the horse has bolted. Well, I couldn't use my original lawyers because they said once they'd been accused of negligence they couldn't act any more. They gave me the name of someone else and said they'd apply for legal aid for me. That was the first I ever heard of legal aid for this situation, but I've now been told that in actual fact you can't get legal aid for businesses, so they could never put the company situation through, only my personal bankruptcy.

Anyway, so I went to the lawyer. I dropped off all the documents to him and he spent ages and I thought it was all sorted. But then just before the court hearing I went to see him and it became clear it was way over his head. He didn't really understand any of the details in the business and he was just not on top of it, not like I was. He agreed he couldn't really handle it. I then contacted every single lawyer, or not quite, I contacted maybe 10 lawyers on the legal aid list from the area. I just got - some people didn't respond or didn't get back but - I did get one lawyer who was brave enough to say, "Tom", he put this in writing, "this is a specialised case that requires a specialised solicitor and these lawyers or solicitors don't work for legal aid rates". So I just felt really stuck, I didn't really see I had a choice. It was either represent myself or just give up and I couldn't just walk away and let those bastards get away with it.

July

I've been working away preparing for the trial, it is going to be in December. The other side's lawyer has been a bit cool towards me, but not too bad. He is a decent sort of a guy, he gave me a couple of pointers.

It is a bit difficult getting everything in order. I did go and see a few lawyers to see if they could help me prepare for the trial, with the evidence and things. They weren't interested though and I understand fully that, they are lawyers, the ones who know litigation, they don't want to be someone's tutor. They want to do it themselves. It is all in or all out and I get that. I have had a couple of opinions though on some of the legal points and I'll be using those as the basis for closing.

I have got myself someone to advise behind the scenes. He isn't a lawyer, but he has run a very successful farm for many years, and he has a bit of an interest in the law. He is a very smart guy, very clear thinker. He has helped a few people out in my sort of situation. We talk about the case and he looks at my documents, helps me take out all the waffle. We get them so I don't sound like I'm moaning and whinging to the judge, because being emotionally involved you just want to say: "Oh you bastards! You can't do this to me". He said the danger is a judge just won't read it if it is too long and not to the point. So it has been an interesting experiment in becoming detached and dispassionate about your own case. And I've got to that point, slowly but surely, and I'm pleased about that because it is very helpful to how I conduct the case.

November

I've just had the pre-trial callover and it was fine, it was all just procedural. I get the feeling that our Judge is a bit of a stickler for procedure but that is okay, it is all part of the process. The Judge said a couple of my witnesses can't give the evidence I wanted them to give, so I'll just have to do without them. What I really need to find out before it starts is to what extent I can use cross-examination to get across my message - that will be the key to it really. I am a bit hazy about the opening statement and then where the guts of the case is fitted in. I have all this authority and arguments and I'm not sure how that all fits together, how I tell the Judge about it.

December

The trial starts in the morning. I'm a bit nervous, few nightmares, but it will be good to get going now. To me a lot of it is black and white, there is no argument, just no argument at all. But there are always clever people. I'm just concentrating on getting the evidence out there, giving my case. I just hope that the Judge lets me say what I need to say. I'm not a lawyer and I'm not going to pretend to know the law, I'm just going to stick to the issues.

February

I'm feeling very battered and bruised. Obviously the experience was a lot more difficult than I thought but then it was a situation where I couldn't afford a lawyer. It was going to cost more money than I had and um, it was kind of a train wreck in slow motion and I have to face the consequences. I'm expecting the worst. That means if it is better, it will be better, but I'm not expecting to have succeeded. The Judge was great really, gave me a lot of leeway but there are a lot of rules, rules I wasn't aware of, and I didn't fit my material into them so I don't know. I've gone over and over it retrospectively and I couldn't have done anything differently. I do wish I'd put more in my submissions but it was hard to keep on top of it all. So now I'm just preparing my appeal and waiting for the judgment to come out, preparing for the worst you know?

D. Gary - Persistent Litigant - High Court

I'm a self-made man really. I went to University briefly, but I never finished. It just wasn't for me and when my brother-in-law suggested we go into business together I packed it in. The two of us built up a portfolio of properties that grew over the years. It was hard graft, a bit of luck, mostly hard work. In 2007, just before the Global Financial Crisis really hit, we had this beautiful subdivision, beachside, ready to go. We'd had problems with that Council for years, but 2008, that was the real beginning. The corruption, persecution really, you just wouldn't believe it. People think they are living in this paradise but it has rot. My cases are really complex and I can't explain all the detail, or even try to, but I have got all the documents if you want to know more. You can't just read the judgments, they are full of half-truths and lies, the Judges protecting themselves and each other.

The whole key has been that they've discredited me to the courts. All they need to say is, "He's vexatious", and the Court says, "Oh yes, he must be if he has gone along for seven years! Who in their right mind would go along for seven years?". There is no way a lawyer will do the cases, they are part of the system, so I have to do it self-represented. Anyway, I couldn't use a lawyer even if I could find one ready to stick his neck out because I can't afford it. It is a system that rapes you financially. The only ones that get justice are the ones with the huge amounts of money and all mine has been taken. But if you are on the wrong side of the old boy network it doesn't matter if you have money, you will soon lose it. That is my own experience. With this application I didn't bother to try and get a lawyer though. I've done a lot of these applications, it is just one more of the same. I know the issues so I don't need help with it.

I prepare my documents entirely by myself, no help whatsoever. I do have various friends who are lawyers, and sometimes I'll get them to look over something, but no, mostly entirely by myself. I have access to LexisNexis when I need it. I use legislation a lot. And I use anything I see that a lawyer has filed - across the board - my lawyers, and anyone else's lawyers. It takes up a great deal of time, doing all the work involved. It does consumes you. I mean, it has to consume you otherwise there would be no point. I can drop everything to deal with the cases, and I do turn down work to do it. I also spend time helping other people who are struggling with similar sorts of problems.

The lawyers on the other side, they are okay, mostly very professional. A bit like the court staff really, they are just cogs in the wheel, they have a job to do. It is the system that is the problem. The Law Schools train the lawyers to think they are operating in the fairest, most transparent system in the world. It is all about indoctrination, it is all this propaganda, but the system is corrupt. It is not like in the third world, where they are paying judges, it is much more insidious and perverse than that. You can take as many cases against the individuals involved as you like. I have, but you can't get anywhere

because they all just protect each other. They are all lawyers or former lawyers, there is no independence, no check. But because I'm a conservative person, I want the justice system fixed. I don't want to go and blab, and tell the world, and embarrass the country. I'm hoping against hope that with this application, this time, they'll have the balls to fix it.